IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

L.C. SUIT NO. 1364 OF 1975

1. The Union of India
2. Union Potash Ltd.
United India Building,
Post Box No. 902, Sir
Phirozshah Mehta Road,
Bombay 400 001. ... Plaintiffs

Versus

1. Arimar Lines Ltd.
having their office at
P.B. 44, Beirut.

2. M/s. Chowgule Brothers,
India House, Ground Floor,
P.O. Box No. 1770,
Opposite General Post Office,
Bombay 400 001. ... Defendants

Mr. S.R. Rajguru i/by R.L. Mukherjee for Plaintiffs.

None for Defendants.

CORAM : F.I. REBELLO,J.
DATED : AUGUST 19, 2005

ORAL JUDGMENT:

. It is the case of the Plaintiff that by charter party agreement dated 24.6.1974 entered into between first Defendants and the Minerals & Metals Trading Corporation of India,New Delhi, the first defendants agreed to carry on board the said vessel a quantity of 9500 metric tonnes 5% more or less Muriate of Potash in bulk all under deck from one or two safe berths at Rostock, Wismar or Szczecin to one or two safe Ports on the Indian coast.

Under the said charter party agreement, the goods were to be loaded and discharged under the supervision of the Master of the vessel, Under the said charter party agreement, the master of the said vessel was to sign the bills of lading on behalf of the owners of the said vessel. Pursuant to the charter party agreement and in accordance therewith, a quantity of 8700 metric tones of Muriate of Potash was loaded on board the said vessel "Kosmos" in or about July, 1974 at the Port Wismar. In respect of the said loading of Muriate of Potash, the Master of the said vessel on behalf of the first Defendants issued two separate Bills of Lading for the consignment of Muriate of Potash dated 31st July, 1974 and 1st August, 1974. Under the said bills of Lading, the first plaintiffs were mentioned as the consignees of the said goods and the Defendants agreed to deliver the said goods to the Plaintiffs in safe and sound condition. The said Bills of Lading also mentioned that the terms and conditions of the charter party agreement were applicable. The said Bills of Lading also mentioned the quantity of Muriate of Potash loaded on board the said vessel. The said Bills of Lading were endorsed first in favour of the second Plaintiffs and thereafter in favour of M/s. Lee & Muirhead (India) Private Ltd. Clearing Agents, for

the purpose of clearance only. In respect of the aforesaid goods, the Plaintiffs had received a certificate of inspection. The Plaintiffs had also received two invoices in respect of the said goods. The defendants were informed that the goods loaded on board the said vessel were to be discharged at the port of Bombay. The vessel "Kosmos" carrying on board the Plaintiffs' goods arrived at the port of Bombay on or about 13th October, 1974 and commenced discharge of the cargo on 7th November, 1974. The discharge of the cargo was completed on 25th November, 1974. It was found that there was short delivery of 171.156 Metric Tonnes of Muriate of Potash. In these circumstances, letter dated 14.12.1974 was addressed by the clearing agents of the Plaintiffs. Plaintiff submitted their claim bill in the sum of Rs.1,92,792.91 ps. The defendants by their letter dated 26th December, 1974 denied their liability on the ground that the cargo was loaded and discharged free of risk and expense to the vessel. The Plaintiffs say that a Clearance Report in respect of the said goods showing the manifested quantity of the goods and the goods cleared and other particulars was prepared by M/s. Lee & Muirhead (India) Pvt. Ltd. on behalf of the Plaintiffs. Plaintiff also submitted further bill dated 26th June, 1975.

There was further correspondence exchanged by Plaintiff with defendants. Plaintiffs contend that under the Bills of Lading issued by the Master of the vessel, the Defendants were bound to carry and deliver to the Plaintiffs as consignees of the said goods mentioned in the Bills of Lading in safe and sound condition. The draft survey in respect of the said goods delivered to the Plaintiffs was carried out and according to the said survey, there was a short delivery of 161.785 metric tonnes of the said goods. According to the said survey report, the said vessel had discharged 8538.215 metric tonnes. In the charter party agreement and bills of lading, defendants were shown as owners of the said vessel and liable to deliver to the Plaintiffs the full quantity of the goods loaded on board the said vessel. As there is short delivery, the defendants have committed breach of the contract and consequently are liable to pay to the Plaintiffs the value of the said goods on the aforesaid grounds including wrongful conversion of the said goods to their own benefit. It is therefore, submitted that the defendants are due and payable to the Plaintiffs the sum of Rs.1,52,961.41 ps. with interest at the rate of 15% p.a. and further interest at the rate of 6% p.a or other rate as the court may be pleased to

award from the date of Judgement till payment.

2. The defendants filed their written statement. It was sought to rely on clause (4) and (7) of the charter party agreement which reads as under :

> "4. The cargo shall be loaded, spouted, trimmed (any special trimming on owners' account) and discharged by the charterers free of expenses and risk to the vessel but under the supervision of the Master....."

> "7. The master or his agents shall sign Bills of Lading at any rate of freight required by Charterers or their agents, without prejudice to this Charter Party, but at not less than the chartered rate."

. Reliance is next placed on the bill of lading on the following clause :

> "Weight, quality, condition and measure unknown."

. The defendants therefore, pleaded that the quantity mentioned in the said Bills of Lading are in no way binding upon the defendants. In so far as other specific averments by the Plaintiffs, the same were denied. It is specifically set out that under the provisions of Article IV(2) of the Indian Carriage of Goods by Sea Act, 1925, the defendants are thus in no way liable for the alleged loss.

4. Based on the pleadings, following issues were framed :

1. Whether the Master of the Vessel was to sign Bills of Lading on behalf of the owners of the vessel as alleged in Paragraph 2 of the Plaint?

2. Whether the consignors had loaded the quantities mentioned in the Bills of Lading as alleged in Paragraph 3 of the Plaint?

3. Whether the Bills of Lading had been endorsed in favour of M/s. Lee Muiarhead (India) Pvt. Ltd. as Clearing Agents and for the purpose of clearance only as alleged in Paragraph 3 of the Plaint?

4. Whether the Certificate of Inspection referred to in Paragraph 4 of the Plaint is valid and correct and/or binding upon the Defendants as alleged in Paragraph 4 of the Plaint?

5. Whether 171.156 metric tonnes of Muriate of Potash was short delivered to the Plaintiffs as alleged in Paragraph 6 of the Plaint?

6. Whether there was a short delivery of 161.785 metric tonnes of Muriate of Potash as alleged in Paragraph 7 of the Plaint?

7. Whether the Plaintiffs were the owners of the said consignment as alleged in Paragraph 8 of the Plaint?

8. Whether the amount of Rs.1,52,961.41 paise or any other sum as alleged in paragraph 9 of the Plaint is due to the Plaintiff?

9. Whether the quantities mentioned in

the Bills of Lading were not binding upon the Defendants for the reasons alleged in Paragraph 3 of the Written Statement?

10. Whether the Defendants are not liable for any loss in the course of discharge for the reasons alleged in paragraph 9 of the Written Statement?

11. Whether the Defendants are not liable for the alleged loss, if any, by reason of the provisions contained in Article IV Rule 2 of the Indian Carriage of Goods by Sea Act, 1925 as alleged in paragraph 10 of the Written statement?

12. Whether the second Defendants acted merely as agents of the first Defendants and are therefore, not liable as alleged in paragraph 13 of the Written statement?

13. To what relief, if any, are the Plaintiffs entitled?

5. On behalf of the Plaintiff, they have examined Puthecode Parameshwar Kannan by filing his evidence

on affidavit. Along with affidavit he has produced documents which have been marked and exhibited. None was present for the defendants and the evidence of this witness has gone on record uncontroverted.

6. From the issues, in respect of Issue Nos. 1, 2, 3, 4, 5, 6, 7 and 8 the burden was on Plaintiff, whereas the burden of proving Issues Nos. 9 to 12 was on the defendants. Considering that there is only one witness who has also produced documentary evidence, all the issues can be answered by considering the evidence oral and documentary. All the documents have marked and exhibited as B2 collectively from Sr. Nos. 1 to 21. The charter party agreement dated 24.06.1974 and addendum No. 1 dated 24.6.1974 are on record as also two bills of lading dated 26.4.1974. The certificate of inspection dated 5.8.1974 is also placed on record and marked and exhibited at Sr. No. 20 and the clearance report dated 1.1.1975 and Survey Report dated 6.12.1974 of J.B. Boda are also on record. The claim for short fall quantity is also produced as also various other documents and correspondence exchanged between the parties which are listed from Item Nos. 6 to 15 as also 18. In his affidavit evidence, P.W. No. 1 has referred to all these

documents and has specifically set out that there was short delivery as per the loss certificate of 171.156 metric tonnes. The Plaintiff however, in the plaint itself have reduced the said amount based upon subsequent draft survey and it is issue NO. 6 for the short delivery of 161.785 metric tonnes of Muriate of Potash. From the above it will be clear that the vessel Kosmos in July, 1974 loaded on board 8700 metric tonnes of Muriate of Potash at the port of Wismar. This is so proved by two bills of lading which have been taken on record and marked Exh. C. As such Issue Nos. 1 and 2 have been proved by the Plaintiffs. The averments by the Plaintiff that bill of lading has been endorsed in favour of M/s. Lee & Muirhead (India) Pvt. Ltd. has not been disputed. The letter dated 26.6.1975 is addressed by Claimant NO. 2 to Defendant No. 2 wherein M/s. Lee & Muirhead (I) Pvt. Ltd. have been indicated as the agents. It will thus be clear that the Plaintiffs have discharged their onus in so far as Issue No. 3 is concerned. Issue No. 4 has been provided by exhibiting certificate of inspection dated 5.8.1974. In the plaint itself, Plaintiffs has restricted their claim from earlier 171.156 metric tonnes short delivery to 161.785 metric tonnes of short delivery. The same again has gone

uncontroverted. In respect of this short delivery of 161.785 metric tonnes, the Plaintiffs have claimed value of 161.785 metric tones at the rate of Rs.360/- per metric tonnes which works out to Rs.58,242.60. Similarly freight is worked out at U.S. $ 70.00 per L.T. (1 u.s.$ = Rs.8.23) in the sum of Rs.93,204.34. Insurance at 1% on C & F amounting to Rs.1,514.47 and the amount as now claimed would be Rs.1,52,961.41 ps. Plaintiff therefore, have discharged burden cast on them in so far as issues Nos. 7 and 8 are concerned.

7. In so far as Issue Nos. 9 to 12 are concerned, no evidence has been led on behalf of the defendants and therefore, the said issues are answered against the defendants.

8. In so far as interest is concerned, Plaintiffs have not produced any evidence to show that in terms of any agreement that they are entitled to particular rate of interest which is the contractual rate of interest. There is also no documents based on which the demand for interest has been made. In the circumstances, at the highest, from the date of the suit, Plaintiff will be entitled to interest in terms of Interest Act. That rate would be rate of interest which

Nationalised Banks give on fixed deposits which can be granted at the rate of 6% p.a. In the light of the same, reliefs can be granted as under :

9. There will be Judgement and decree in favour of the Plaintiff in the sum of Rs.1,52,961.41 ps. with interest at the rate of 6% p.a. from 24.11.1975 till date and at the same rate on Rs.1,52,961.41 ps till payment. Costs to be paid by the defendants.

(F.I. REBELLO,J.)